

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

JF

PATRICK L. RICHARDSON,

Petitioner,

vs.

JAMES WALKER,

Respondent.

No. C 09-03344 JF (PR)

ORDER OF DISMISSAL;
 DENYING MOTION FOR LEAVE
 TO PROCEED *IN FORMA*
PAUPERIS

(Docket Nos. 5 & 6)

Petitioner, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has previously filed a petition for a writ of habeas corpus with this Court which was denied as untimely and on the merits on August 4, 2006. See C-97-20847 JF (PR). The instant petition is therefore the second filed by Petitioner challenging the same conviction and sentence.¹ Petitioner admits as much in a letter to the Court in which he states that the issues in the instant petition “emanate from a previous Habeas Corpus [*sic*] denied by this Court... in

¹ Petitioner filed another petition while Case No. C-97-20847 JF (PR) was pending. The Court dismissed the second petition as a second and successive petition. See C-02-02091 JF (PR).

1 August of 2006” and that the petition “is not a successive petition because [the]
2 issues are not the same as the last writ.” (Docket No. 2.)

3 A district court must dismiss claims presented in a second or successive
4 habeas petition challenging the same conviction and sentence unless the claims
5 presented in the previous petition were denied for failure to exhaust. See 28 U.S.C.
6 § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999).

7 Additionally, a district court must dismiss any new claims raised in a successive
8 petition unless the petitioner received an order from the court of appeals authorizing
9 the district court to consider the petition. See 28 U.S.C. § 2244(b)(2).

10 Here, the instant petition challenges the same sentence as the previous
11 petition and Petitioner has not presented an order from the Ninth Circuit Court of
12 Appeals authorizing this Court to consider any new claims. Petitioner’s first petition
13 was adjudicated on the merits in this Court’s order denying the petition on August 4,
14 2006. Accordingly, this Court must dismiss the instant petition in its entirety.

15 The instant petition is DISMISSED as a second and successive petition
16 pursuant to § 2244 (b)(1).

17 Petitioner’s motion for an extension of time to file an in forma pauperis
18 application is GRANTED. (Docket No. 6.) The motion filed on September 1, 2009,
19 is considered timely. (Docket No. 5.) However, the motion for leave to proceed in
20 forma pauperis is DENIED because Petitioner has not shown an adequate level of
21 poverty as the average monthly balance in his account was \$192.33, for the six-
22 months preceding the filing of this petition

23 This order terminates Docket Nos. 5 and 6.

24 IT IS SO ORDERED.

25
26 DATED: 11/30/09

27
28

JEREMY FOGEL
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PATRICK L. RICHARDSON,
Petitioner,

Case Number: CV09-03344 JF

CERTIFICATE OF SERVICE

v.

JAMES WALKER,
Respondent.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/9/09, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Patrick L. Richardson H-59962
California State Prison-Folsom (New)
P.O. Box 290066
FB-5-215
Represa, CA 95671

Dated: 12/9/09

Richard W. Wieking, Clerk